

Serial No. 10/007,477

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REMARKS

The Examiner's comment that "applicant agrees with the examiner that Michelson '423 anticipate claims 1-3 and 5" is incorrect and inappropriate. The Examiner should refrain from attempting to place his own remarks in the record claiming that they came from Applicant, which they did not. In fact, Applicant disagrees that Michelson anticipates or renders obvious the instant claims. With respect to claim 1, the Examiner argues that Michelson sets forth "a guide 836" but this is simply an aperture, and not a "guide" that would be recognizable to anyone of skill in the art. Nevertheless, claim 1 has been amended to add that the guide is a separate and removable element, a feature which Michelson neither teaches nor suggests. With regard to claim 12, although the Examiner has removed the allowability, the Examiner has not provided any reasons why this was done. Indeed, claim 12 and those claims which depend from claim 12, include the limitation of "a fastener configured to extend through at least a portion of at least one of the vertebral bodies and into the lateral surface of the fusion device." Applicant requests that the Examiner either point out where this is taught or suggested in the '423 patent, or once again allow the claims.

Based upon the foregoing amendments and comments, Applicant believes that all pending claims are now in condition for allowance. Questions regarding this application may be directed to the undersigned by telephone, facsimile or electronic mail to expedite prosecution.

Respectfully submitted,

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